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Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

In re Applications of:)	MM DOCKET NO. 93-246
KB BROADCASTING, INC.)	File No. BPH-920604MC
LYNN KETELSEN)	File No. BPH-920604MD
For a Construction Permit for a)	
New FM Station on Channel 265A)	
at Blooming Prairie, Minnesota)	

TO: Honorable Richard L. Sippel
 Administrative Law Judge

JOINT REQUEST FOR APPROVAL OF SETTLEMENT AGREEMENT

KB Broadcasting, Inc. ("KB") and Lynn Ketelsen ("Ketelsen"), jointly and by their counsel, hereby respectfully request the Presiding Judge to approve the accompanying Settlement Agreement between them, dismiss KB's application with prejudice, and grant Ketelsen's application. In support whereof, the following is stated.

By a Hearing Designation Order, DA 93-1047, released September 20, 1993, the mutually exclusive applications of KB and Ketelsen were designated for a comparative hearing.

The parties have now agreed to settle their differences rather than to litigate. They have entered into a Settlement Agreement (which is submitted herewith as Appendix 1) pursuant to which Ketelsen would pay KB up to \$13,000 (but not more than KB's reasonable and legitimate expenses incurred in the preparation and prosecution of its application, and not more than approved by the Commission); Ketelsen would grant KB an 18-month right of first refusal to purchase the Station; and Ketelsen would grant KB a limited 18-month conditional option

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to purchase the Station in exchange for KB's request to dismiss its application.

Aside from the Settlement Agreement, the parties have also entered into a Production Agreement whereunder KB's president, Kevin Lein, will provide certain production services to Ketelsen in connection with Ketelsen's proposed Station. A copy of this Production Agreement is found in Appendix 2.

The Settlement Agreement includes an Exhibit A containing an itemized listing of KB's reasonable and legitimate expenses incurred during the preparation and prosecution of its application. ^{1/} The expenses shown exceed \$13,000. Therefore, it appears that KB can receive the maximum amount of \$13,000 promised in the Agreement. The Settlement Agreement also includes statements in Paragraph 10 to satisfy the requirements of Section 73.3525(a) of the Commission's rules regarding the applicants' certifications as to consideration, motivation and the benefit to the public interest to be derived from the settlement.

There are no basic disqualifying issues pending against Ketelsen. Ketelsen was required by the Hearing Designation Order to file an amendment to report the address of the source of his financing. Such an amendment is being filed of even date herewith with an appropriate petition for leave to amend. There appears to be no obstacle to the grant of Ketelsen's application.

^{1/} The itemized listing of KB's expenses is not available to file with this pleading. KB will provide that information in the near future.

The grant of this Joint Request would serve the public interest because time-consuming and expensive litigation would be avoided. This would conserve the resources of the parties and of the Commission. It would also permit the sooner initiation of a new broadcast service for the community of Blooming Prairie, Minnesota.

Consistent with current Commission regulation and policy, and contingent upon the approval of the Settlement Agreement, Ketelsen requests leave to withdraw his integration and diversity commitments made in connection with his application and hereby seeks to be relieved of them.

WHEREFORE, KB and Ketelsen respectfully urge the Presiding Judge (1) to approve the accompanying Settlement Agreement, (2) to dismiss KB's application with prejudice, and (3) to grant Ketelsen's application.

Respectfully submitted,

KB BROADCASTING, INC.


By: Clifford M. Harrington
Clifford M. Harrington

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Its Attorney

and

LYNN KETELSEN

By: 
Donald E. Martin

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2000 L Street, N.W.
Washington, D.C. 20036
(202) 887-5070

His Attorney

October 8, 1993

APPENDIX 1

Appendix 1 is the Settlement Agreement between KB
Broadcasting, Inc. and Lynn Ketelsen.

SETTLEMENT AGREEMENT

This Agreement is made by and between Lynn Ketelsen ("Ketelsen"), a Minnesota resident whose address is 1440 Grace Avenue, Willmar, Minnesota 56201, and KB Broadcasting, Inc. ("KB"), an Iowa corporation whose address is 4 Bunker Hill Square, Mason, Iowa 50401 (hereinafter sometimes collectively referred to as the "Parties").

WHEREAS, Ketelsen has an application pending before the Federal Communications Commission ("Commission" or "FCC") requesting authority to construct a new FM broadcast station (the "Station") at Blooming Prairie, Minnesota on Channel 265A (File No. BPH-920604MD); and,

WHEREAS, KB has a mutually exclusive application pending with the FCC for the same facilities (File No. BPH-920604MC); and

WHEREAS, the Parties wish to avoid further costly and lengthy litigation; and

WHEREAS, the Parties believe that the settlement proposal herein would be in the public interest because it would resolve this proceeding and allow the prompt initiation of a new FM broadcast service at Blooming Prairie, Minnesota; and

WHEREAS, the obligations of the Parties hereunder are subject to the prior approval of the FCC;

NOW THEREFORE, in consideration of the mutual promises made herein, the Parties agree as follows:

1. The Parties will file a Joint Request with the FCC, pursuant to Section 73.3525 of the Commission's rules, seeking:
 - A. the approval of this Agreement;

B. the dismissal with prejudice of KB's application;

C. the grant of Ketelsen's application with no condition materially adverse to Ketelsen.

The Parties shall submit with the Joint Request a copy of this Agreement executed by the Parties together with all supporting documentation as may be required by Section 73.3525 of the Commission's rules.

2. KB agrees to request the dismissal with prejudice of its above-identified pending application. KB agrees to take no action adverse to this Agreement, the Joint Request, any amendment Ketelsen may file with respect to his application, the dismissal of KB's application, or the grant of Ketelsen's application.

3. As consideration to KB for the foregoing and for the performance of KB's obligations hereunder, Ketelsen agrees to the following as shall be more fully described in succeeding paragraphs:

A. Ketelsen shall pay to KB an amount equal to its actual, legitimate, reasonable and prudent expenses in preparing and prosecuting its application not exceeding Thirteen Thousand Dollars (\$13,000).

B. Ketelsen shall grant to KB a right of first refusal to purchase the Station to expire eighteen months from the date the Station goes on the air pursuant to program test authority.

C. Ketelsen shall grant to KB a limited option to purchase the Station under certain circumstances for eighteen months from the date of the construction permit.

4. Ketelsen agrees to pay to KB an amount equal to its actual, legitimate, reasonable and prudent costs as approved by the FCC incurred by KB in the preparation and prosecution of its above-identified application, but not to exceed Thirteen Thousand Dollars (\$13,000.00) ("Settlement Price"). An itemized accounting of KB's expenses is attached hereto as Exhibit A. The Settlement Price is to be paid to KB within fifteen (15) days following the date of finality of an order released by the FCC (the "Order"), or the last of a series of orders, or other documents, approving this Agreement, dismissing with prejudice KB's application and granting Ketelsen's application with no conditions materially adverse to Ketelsen. The Order shall be deemed to be final when it is no longer subject to further administrative or judicial reconsideration, review or appeal. Notwithstanding the foregoing, if Ketelsen accepts the grant of his application with a materially adverse condition, he shall nonetheless be obligated to KB as provided hereunder. Ketelsen shall be deemed to have accepted such a grant when he commences to construct the Station.

5. Ketelsen agrees to grant to KB the right of first refusal to purchase the Station. Such right of first refusal shall expire eighteen months from the date of the Station goes on the air pursuant to program test authority. If Ketelesen receives from a third party purchaser an offer to acquire the Station or a controlling interest therein, and if Ketelsen

wishes to sell the Station for the terms of the offer, Ketelsen shall, prior to any such sale, first comply with the following procedures:

A. Ketelsen shall execute in writing and deliver to KB notice of his desire to sell the Station. The notice shall contain the price and material terms and conditions offered by the prospective purchaser and the prospective purchaser's name and address. The notice shall be sent by overnight delivery and shall be deemed to have been given as of the first business day after it is sent.

B. KB shall have the right, at its option, to acquire an interest in the Station equal to that proposed in the offer from the prospective third party purchaser, at the price and on the terms and conditions offered by the prospective purchaser. If KB wishes to exercise its option to purchase, it shall, within fifteen business days of the date that notice was given to KB by Ketelsen of his desire to sell, comply with the following procedures:

i. KB shall deliver to Ketelsen an executed letter of intent indicating its intent to purchase the Station at the price and under the terms and conditions offered by the prospective purchaser. Either party may at that time also reserve the right to execute within an additional fifteen business days a more formal contract, the material terms of which shall not vary from those of the letter of intent.

ii. With its letter of intent, KB shall provide Ketelsen with documentation demonstrating that it is financial-

ly qualified to purchase the Station at the price and under the terms and conditions offered by the prospective purchaser.

iii. KB shall place an amount of money equal to the prospective purchaser's earnest money escrow deposit as earnest money in an escrow account with a Federally insured banking institution to be administered by an escrow agent of Ketelsen's choice.

C. If, through no fault of either Ketelsen or KB, the FCC fails to consent to the assignment of the Station from Ketelsen to KB within six months (or such other time as the parties agree upon) after the filing of an appropriate assignment application, either party may terminate the assignment contract. In such case, the funds placed in escrow by KB as earnest money pursuant to Paragraph 5(B)(iii) shall be returned to it and the parties shall resume their status quo ante under this Agreement, except that KB's right of first refusal shall thereupon expire, and Ketelsen shall have no obligation under this Agreement to offer to sell the Station to KB.

D. If the FCC denies an application for consent to assign the Station to KB for reasons accountable to KB or if KB fails to consummate the transaction if and when approved by the FCC, then KB shall forfeit to Ketelsen as liquidated damages the funds it placed (or should have placed) in escrow pursuant to Paragraph 5(B)(iii) hereof, KB's right of first refusal shall expire immediately thereupon, and Ketelsen shall have no obligation under this Agreement to offer to sell the Station to KB.

E. If KB fails to respond to Ketelsen's notice of his desire to sell the Station within the time required pursuant to Paragraph 5(B) hereof, KB's right of first refusal shall expire immediately thereupon, and Ketelsen shall have no obligation under this Agreement to offer to sell the Station to KB at the price and under the material terms and conditions stated. Notwithstanding the foregoing, KB's right of first refusal and Ketelsen's obligations to KB pursuant to such right of first refusal shall remain intact and in force as to any other offer received by Ketelsen which involves a different price or a difference in the material terms and conditions.

6. KB shall have an option to purchase the Station for Seventy-five Thousand Dollars (\$75,000) at any time until eighteen months after the date of the construction permit upon the following condition. Such option shall be exercisable if and only if Ketelsen establishes the main studio for the Station (as defined by the FCC's rules, regulations and policies) at any location more than five miles outside of the corporate limits of Blooming Prairie, Minnesota. Such option shall be exercised in accord with the following procedures.

A. Within thirty days of the establishment of the main studio for the Station at a location more than five miles outside of the corporate limits of Blooming Prairie, KB shall provide written notice to Ketelsen by overnight delivery that it intends to exercise its option to purchase the station. The parties shall cooperate to file an appropriate assignment application within fifteen days of KB's notice that it intends to exercise its option.

B. Simultaneously with giving notice of its intent to exercise the option, KB shall place an amount of money equal to the full purchase price as earnest money in an escrow account with a Federally insured banking institution to be administered by an escrow agent of Ketelsen's choice.

C. If, through no fault of either Ketelsen or KB, the FCC fails to consent to the assignment of the Station from Ketelsen to KB within six months (or such other time as the parties agree upon) after the filing of an appropriate assignment application, either party may terminate this assignment contract. In such case, the funds placed in escrow by KB as earnest money pursuant to Paragraph 6(B) shall be returned to it and the parties shall resume their status quo ante under this Agreement, except that KB's option pursuant to this Paragraph 6 shall be deemed to have expired.

D. If the FCC denies an application for consent to assign the Station to KB for reasons accountable to KB or if KB fails to consummate the transaction if and when approved by the FCC, then KB shall forfeit to Ketelsen as liquidated damages the funds it placed (or should have placed) in escrow pursuant to Paragraph 6(B) hereof and KB's option shall expire immediately thereupon.

E. If KB fails to exercise its option within thirty days of the date upon which Ketelsen establishes the main studio for the Station at a location more than five miles outside of Blooming Prairie as required pursuant to Paragraph

6(A) hereof, KB's option shall expire upon the expiration of such 30-day period.

7. Ketelsen shall not be obligated to pay the Settlement Price or any portion thereof except as specifically provided in this Agreement. Furthermore, Ketelsen shall not be obligated to KB in any manner if, at the time the obligation is required to be performed, 100% of the stock of KB is not owned by Kevin Lein and/or Brenda Lein, separately or in the aggregate.

8. This Agreement is expressly subject to approval by the FCC.

9. The Parties hereto agree to cooperate with each other and with the Commission by expeditiously providing to each other or to the Commission, or both, all additional information that may be reasonably required, and by expeditiously filing the additional documents that may be necessary or appropriate to comply with the Commission's rules or to effectuate the objectives of this Agreement.

10. By executing this Agreement, each Party hereto hereby certifies under the penalty of perjury the following:

A. That neither it nor any of its principals has paid, received, promised to pay, or been promised to receive consideration of any kind, including merger of interests, in exchange for the dismissal of any mutually exclusive application in this proceeding except as set forth in this Agreement. The parties acknowledge that there exists a separate agreement whereunder Ketelsen is to hire KB's president, Kevin Lein, to perform certain program production services for the Station.

B. That it did not file its application for the purpose of entering into or effectuating a settlement agreement.

C. That the FCC's approval of this Agreement would be in the public interest because it would allow for the immediate resolution of this proceeding, the conservation of the resources of the Parties and of the Commission, and the sooner initiation of a new aural service for the community of Blooming Prairie, Minnesota.

11. This Agreement is the only Agreement between the Parties pertaining to the subject matter hereof. This document sets forth all of the terms and conditions agreed upon with respect to the subject matter hereof, and cannot be amended or modified except by a written instrument executed by both Parties.

12. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their heirs, successors and assigns.

13. The Parties agree that this Agreement may be executed in counterparts, all of which together, so executed, shall constitute one and the same instrument.

14. This Agreement shall be governed by and construed under the laws of the State of Minnesota.

15. Any notices or other communications required or permitted hereunder shall be delivered personally or sent by registered or certified United States mail, return receipt requested, postage prepaid, addressed as follows:

To Ketelsen:

Lynn Ketelsen
1440 Grace Avenue
Willmar, Minnesota 56201

with copy to:

Donald E. Martin, Esquire
Suite 200
2000 L Street, N.W.
Washington, D.C. 20036.

To KB:

Kevin Lein
4 Bunker Hill Square
Mason City, Iowa 50401

with copy to:

David Oxenford, Esquire
Fisher, Wayland, Cooper & Leader
Suite 800
1255 23rd Street, N.W.
Washington, D.C. 20037.

16. Each party hereto expressly warrants that it has the full power and authority to enter into this Agreement and to execute the same, and that there is no constraint upon such party's legal ability to perform its obligations hereunder.

17. Because of the unique nature of the broadcast authorization which is the subject matter of this Agreement, specific performance shall be available as a remedy for breach of this Agreement in addition to all other legal or equitable remedies that are available under this Agreement.

18. If by the date six months from the date that this Agreement is submitted to the FCC for its approval, the FCC has not released an order which has become final approving this Agreement, either party may terminate this Agreement by

providing written notice to the other. In such case, the Parties shall then resume their status quo ante.

IN WITNESS WHEREOF and intending to be legally bound, the Parties have affixed their signatures to this Agreement on the date(s) indicated below:

LYNN KETELSEN

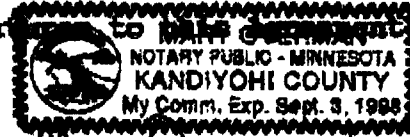
Date

Kevin Lein, President
KB BROADCASTING, INC.

Date

providing written notice to the other. In such case, the Parties shall then resume their status quo ante.

IN WITNESS WHEREOF and intending to be legally bound, the Parties have affixed their signatures to this agreement on the date(s) indicated below:



LYNN KETTELSEN

10/8/93
Date

Kevin Lein, President
KB BROADCASTING, INC.

Date

providing written notice to the other. In such case, the Parties shall then resume their status *qua ante*.

IN WITNESS WHEREOF and intending to be legally bound, the Parties have affixed their signatures to this Agreement on the date(s) indicated below:

EVEN KETLAN

Date



David Hein, President
KB BROADCASTING, INC.

Date

10/8/93

SETTLEMENT AGREEMENT EXHIBIT A

A listing of KB's expenses incurred in the preparation and prosecution of its application will be submitted in the near future by KB.

APPENDIX 2

Appendix 2 is the Production Agreement between Kevin Lein and Lynn Ketelsen.

PRODUCTION AGREEMENT

This Agreement is made by and between Lynn Ketelsen ("Ketelsen"), a Minnesota resident whose address is 1440 Grace Avenue, Willmar, Minnesota 56201, and Kevin Lein ("Lein"), an Iowa resident whose address is 4 Bunker Hill Square, Mason, Iowa 50401.

WHEREAS, Ketelsen has an application pending before the Federal Communications Commission ("Commission" or "FCC") requesting authority to construct a new FM broadcast station (the "Station") at Blooming Prairie, Minnesota on Channel 265A; and,

WHEREAS, Ketelsen has entered into a Settlement Agreement with KB Broadcasting, Inc. ("KB"), a mutually exclusive applicant, whereunder KB will seek the dismissal of its application leaving Ketelsen as the sole remaining applicant with a reasonable expectation that Ketelsen's application will be granted.

WHEREAS, upon the grant of his application, Ketelsen intends to construct the Station and commence on-air broadcast operations.

WHEREAS, Lein is an experienced radio announcer; and

WHEREAS, Ketelsen wishes to obtain Lein's services for production work in connection with the Station; and

WHEREAS, Lein wishes to provide such services to Ketelsen in connection with the Station; then

NOW THEREFORE, in consideration of the mutual promises made herein, the Parties agree as follows:

1. Ketelsen agrees to hire Lein to perform production services for the Station as follows:

A. Lein will produce voice-over production and voice production services, including the production of commercials, announcements, liners, ID's, program openings and closes, sweepers, promos and such other similar items as Ketelsen may order. Ketelsen shall not be responsible for providing any production facilities or materials, or the cost of shipping tapes from Lein to Ketelsen. Ketelsen shall provide the scripts for such productions.

B. Lein shall produce a start-up package for the Station which shall include at least the following components (or an essentially similar group): eight 30-second items, 4 60-second items, ten sets of openings/closes, and 100 sweepers. The price to be paid for such start-up package is \$3,600.

C. Beginning with the second month after the Station goes on the air, Lein shall produce a package for the Station each month which shall include at least the following components (or an essentially similar group): ten 30-second items, six 60-second items, and 25 sweepers. The price to be paid for each such monthly package is \$700. Such monthly packages shall be provided by Lein for at least twelve months commencing on the date one month after the date that the Station begins regular on-air operations.

2. Ketelsen shall have the right to refuse any such production work and request that it be redone if in Ketelsen's sole judgment, the production is not of adequate quality, is

not in an appropriate style, or is otherwise unsuitable for the intended purpose.

3. Lein shall provide the productions on a timely basis, as soon after his receipt of the scripts from Ketelsen as is practical or as is reasonably necessary as indicated by Ketelsen.

4. This Agreement shall be null and void and neither party shall have any obligation to the other hereunder if:

A. The FCC fails to approve the Settlement Agreement between Ketelsen and KB;

B. The Settlement Agreement is terminated under its own terms by either party or by operation of law; or

C. Ketelsen fails for any reason whatsoever to put the Station on the air.

5. If during the life of this Agreement, Ketelsen sells the Station, he shall assign his rights and obligations hereunder to the buyer of the Station and the buyer shall assume such rights and obligations.

6. This Agreement shall be suspended at any time during its pendency that Ketelsen ceases to operate the Station on the air for more than seven consecutive days. Such suspension shall continue until such time as Ketelsen has resumed normal on-air operations.

7. This Agreement is the only Agreement between the Parties pertaining to the subject matter hereof. This document sets forth all of the terms and conditions agreed upon with respect to the subject matter hereof, and cannot be amended or modified except by a written instrument executed by both parties.

8. The Parties agree that this Agreement may be executed in counterparts, all of which together, so executed, shall constitute one and the same instrument.

9. This Agreement shall be governed by and construed under the laws of the State of Minnesota.

IN WITNESS WHEREOF and intending to be legally bound, the Parties have affixed their signatures to this Agreement on the date(s) indicated below.

LYNN KETELSEN

Date


KEVIN LEIN

Date

8. The Parties agree that this Agreement may be executed in counterparts, all of which together, so executed, shall constitute one and the same instrument.

9. This Agreement shall be governed by and construed under the laws of the State of Minnesota.

IN WITNESS WHEREOF and intending to be legally bound, the Parties have affixed their signatures to this Agreement on the date(s) indicated below.



LYNN PETERSEN

10/8/93

Date

KEVIN LEIN

Date